

Remarks:

Status of the Claims

Claims 1-4 and 6-11 were previously pending with claims 1 and 3 being independent. Claims 1, 3, and 11 are presently amended. Claims 1-4 and 6-11 are currently pending with claims 1 and 3 being independent.

In the Office Action (“OA”) dated July 20, 2009, claim 1 was objected to for grammatical informality, claims 1-4 and 6-11 were rejected under 35 U.S.C. § 103 as being unpatentable over Wyatt (U.S. Patent No. 6,490,530), 42 USC 11023 (a), Ishizaka et al. (U.S. Patent No. 5,077,010), and Barnes (U.S. Patent No. 6,422,508). Claims 1-4 and 6-11 were also rejected under 35 U.S.C. § 101 and 112, as discussed below.

Summary of Telephone Interview with Examiner Riviere on Aug. 19, 2009

In a telephone interview conducted on August 19, 2009, Patent Agent Jaclyn S. Alcantara (Reg. No. 61,638) discussed the rejections and objections of the present Office Action dated July 20, 2009 with Examiner Heidi M. Riviere. Regarding the objection of claim 1, Examiner Riviere agreed that an amendment to claim 1 replacing the phrase “a hierarchy of threat and evaluation authorities” with “a hierarchy of authorities, including threat authorities and evaluation authorities,” would overcome the present objection. Examiner Riviere also stated that if amendments are made to overcome the 101 and 112 rejections, that claims 10 and 11 would probably be allowable over the prior art presently cited. Patent Agent Alcantara and Examiner Riviere also discussed possible ways to overcome the 101 and 112 rejections, as well as limitations in claims 3 and 8 which are not found in the cited prior art. The Examiner agreed to take another look at the prior art and re-evaluate these rejections.

Summary of previous 03-31-09 Telephone Interview with Examiner Dean Nguyen

Patent Agent Alcantara conducted a telephone interview with Examiner Dean

Nguyen regarding U.S. Application No. 10/672,212. Examiner Nguyen agreed that the claims as amended in the previous response dated April 1, 2009 were directed to statutory subject matter and therefore overcame the previous 35 U.S.C. § 101 rejections and the 35 U.S.C. § 112 rejections. Furthermore, Examiner Nguyen acknowledged that if Wyatt does not teach, imply, or require displaying an image, this step in the application's claims is not obvious in view of Wyatt.

35 USC 101 Rejections

The Examiner rejected claim 1 under 35 USC 101, asserting that the claimed invention is directed to non-statutory subject matter. However, we contend that the recitation of "a plurality of remote sensing units and a control unit" as well as "a secure remote server" in claim 1 adequately tie the process to a particular apparatus. Furthermore, claim 1 does not include "extra-solution activity thus insignificant to the overall method steps," as asserted by the Examiner on pages 3 and 4 of the Office Action. Each of the steps presented in claim 1 are important steps to the invention and should be given equal patentable weight.

However, during the telephone interview with the Examiner, it was noted that the term "deploying" (in previously amended claim 1(a)) was overly vague and that the term "allowing" (in previously amended claim 1(d)) was not a positive limitation. Therefore, claim 1(a) is presently amended to recite "(a1) obtaining an image of the substance with one or more remotely controllable sensing units;(a2) transmitting the image of the substance from the one or more remotely controllable sensing units to a control unit configured to automatically identify the substance;" Support for this amendment may be found on page 14, In 16-20; page 15, In 1-18; page 16, In 23-26; and page 19, In 20.

Additionally, claim 1(d) is presently amended to recite "instructing allowing at least some members of the hierarchy of authorities, via the control unit, to access the report on the remote server via a wide area network." Support for this amendment may be found on page 25, In 30-32; page 26, In 1; and page 28, In 9-10 & 21-22, among other

places in the application.

Furthermore, the Examiner noted via the telephone interview that the steps of uploading a report and notifying a hierarchy were not tied to a machine. Therefore, the independent claims are presently amended with the phrase “via the control unit” to define a physical device performing these method steps. These amendments are supported on page 19, In 18-22 and page 22, In 14-22, among other places in the application.

Claim 1 Rejections under 35 U.S.C. § 112

The Examiner rejected claim 1 under 35 USC 112 for failing to comply with enablement requirements and for indefiniteness. Specifically, the Examiner states, “Applicant sets forth ‘establishing a hierarchy’, but does not provide sufficient guidance of direction as to how one skilled in the art would establish this hierarchy without undue experimentation.” (OA, page 3, subsection 2)

However, the phrase “establishing a hierarchy” was not included in the previously amended version of claim 1 and is no longer included in the currently amended claim 3. Claim 1 instead was previously amended to recite “notifying ...a hierarchy”. Support for this amendment may be found on page 5, In 12-15; page 25, In 10-32; page 26, In 1-10; and page 28, In 24-28. Claim 3 is amended to recite “determining, via the control unit, a hierarchy of threat evaluators...” Support for this amendment may be found on page 22, In 14-25, among other places in the application.

Furthermore, the Examiner states, “Applicant claims uploading the report, but has not positively recited creating a report.” (OA, page 3, subsection 4). However, claim 1 was previously amended to positively recite the step of “generating a report with the control unit, the report comprising an image of the substance.” Therefore, this rejection is improper, as it was not based on the most recent version of the amended claims.

Regarding claim 11, it appears that the Examiner did not consider the most recent version of the claim in this rejection. Claim 11 was not new in the previous response dated April 1, 2009, and had been amended to overcome this identical rejection

asserted in the previous Office Action. However, after discussion with the Examiner regarding this rejection, it was agreed that the claim should be amended to further define that physical orientation of the device is proper when the device is oriented for sample collection. Therefore, claim 11 is presently amended to recite: "The method of claim 10, wherein the remote sensing units act upon hitting the ground to properly position various operational elements of the remote sensing units for sample collection." Support for this amendment may be found on page 19, ln 4-12.

Claims 3 and 8 rejections under 35 U.S.C. § 103

The applicant respectfully disagrees with the Examiner's assertion on page 8 of the OA that performing a set of scattered light measurements by which the target aerosol particles are well classified and/or identified, one-at-a-time, as in Wyatt, results in a magnified image. Specifically, ***the Examiner admits on page 7 of the present OA that Wyatt does not teach "the report comprising an image of the substance"***. Therefore, Wyatt can not possibly teach "wherein the report includes a magnified image of the substance", as in claim 3. Furthermore, 42 USC 11023 (a), Ishizaka et al., and Barnes ***do not*** teach "wherein the report includes a magnified image of the substance", as in claim 3.

Measuring light does not inherently require a displayed result, and because Wyatt does not teach a report comprising an image of the substance, it also does not disclose a magnified image, but rather detects light in order to classify or identify aerosol particles. The fact that the particles are disclosed as ***identified*** one at a time (as noted by the Examiner on page 8 of the OA) still does not teach or suggest a magnified image nor does Wyatt disclose any image-obtaining devices nor any means for magnification. The same is also true regarding claim 8, in that Wyatt does not disclose a microscope-magnified image. Instead, as described in Col. 8, lines 46-51 of Wyatt, the sampled aerosol stream is diluted so that only a single particle is in the laser beam at any moment, and then light scattering measurements are made on each transiting particle. So Wyatt

discloses measurements of individual particles of a substance, but does not suggest nor require a magnified image of the substance to do so.

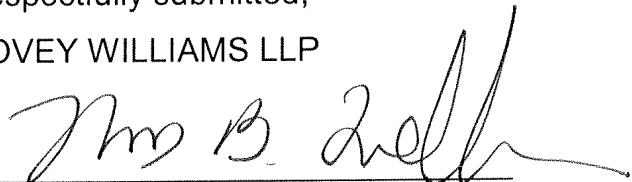
If no specific prior art reference can be provided which teaches this limitation along with the other limitations of claims 3 and 8, the applicant asks that the rejections of claims 3 and 8 be withdrawn.

Conclusion

For at least the reasons set forth above, applicant respectfully submits that claims 1–4 and 6–11 are in allowable condition and requests a Notice of Allowance. In the event of further questions, the Examiner is urged to call the undersigned. Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 19-0522.

Respectfully submitted,
HOVEY WILLIAMS LLP

BY:



Thomas B. Luebbering, Reg No. 37,874
10801 Mastin Boulevard Suite 1000
Overland Park, Kansas 66210
(913) 647-9050

ATTORNEYS FOR APPLICANT(S)